

(1880) 04 AHC CK 0007

Allahabad High Court

Case No: None

Thakur of Masuda

APPELLANT

Vs

The Widows of the
Thakur of Nandwara

RESPONDENT

Date of Decision: April 5, 1880

Citation: (1880) ILR (All) 819

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

The question referred to us by the Division Bench (Spankie, J., and Straight, J.) is whether, under the circumstances, the reference by the Chief Commissioner to this Court was competently made. As the record shows, the case proceeded on its course at Ajmere until it came before the Chief Commissioner on appeal from the Commissioner. It was stated to us by Mr. Colvin that notice had been given that the appeal would be heard by the Chief Commissioner, u/s 551 of the Code of Procedure, and that he himself appeared on that notice, and he was arguing the case on that footing when the Chief Commissioner stated that he entertained a doubt whether the appeal was validly before him, or whether the judgment of the Commissioner must not be regarded as a final one, and as such the judgment to be appealed to Her Majesty in Council. The Division Bench are on their part doubtful whether the Chief Commissioner could make such a reference to this Court and themselves refer their doubt to this Full Bench.

2. Section 21 of the Ajmere Regulation I of 1877 provides that "when any Appellate Court on the trial of a civil appeal entertains a doubt, in respect of a question of the nature specified in Section 17, such Court may refer such question in manner provided by Section 18." The question referred to in Section 18 is a question of the nature specified in Section 17 and must therefore be "a question of law, or usage having the force of law, or the construction of any document, or the admissibility of

any evidence affecting the merits of the case." Upon these provisions of the Regulation two questions arise (i) whether the Court of the Chief Commissioner was under the circumstances an Appellate Court within the meaning of the section, and (ii) whether the proceeding before the Chief Commissioner was in the nature of a "trial" of a civil appeal. My answer to the first question is that the Chief Commissioner's Court was clearly an Appellate Court within the meaning of Section 21, and in the second place that the proceeding before the Chief Commissioner as such Appellate Court was a trial within such meaning. For it was, although a proceeding u/s 551 and therefore ex parte, of such a nature that judgment upon it against the appellant finally disposed of the case on the merits, the only other possible judgment being notice to the respondent to appear u/s 552 and following sections. Such a proceeding having such an effect must, in my judgment, be deemed a trial to all intents and purposes as intended by Section 21, and these questions being questions of law could legally be referred by the Chief Commissioner to the High Court.

3. Such is my answer to our colleagues of the Division Bench. But as I have made a careful examination of the record of the case, I trust they will allow me to point out to them certain irregularities of procedure on the part of the judicial authorities of Ajmere. The original suit appears to be of the nature described in Section 34 of the Ajmere Regulation, viz., a suit in which a question of succession was clearly raised, and the Subordinate Judge gave his judgment on the 12th June 1877, dismissing the claim. From such judgment an appeal was taken to the Commissioner. The date of this appeal does not appear from the record, nor does the memorandum of appeal itself bear any date; the appeal nevertheless proceeded, and while it was pending, and before giving his judgment, the Commissioner referred to the Chief Commissioner a question of the nature mentioned in Section 17, which the Chief Commissioner answered, and thereupon the Commissioner disposed of the appeal before him according to the Chief Commissioner's opinion by a judgment dated the 28th February 1879, reversing that of the Subordinate Judge and dismissing the suit. The appellant in that appeal, considering that the Commissioner's decision so given was final for the purpose of Section 595, Civil Procedure Code, applied under ss. 598 and 600, * Civil Procedure Code, to the Commissioner for a certificate that the case was a fit one for appeal to Her Majesty in Council. But the Commissioner did not consider his judgment final in that sense and refused the application, whereupon the appellant lodged a formal appeal in the Court of the Chief Commissioner against the judgment of the Commissioner. The Chief Commissioner ordered the case to be heard before him u/s 551, but while it was proceeding he was visited by the doubt to which I have referred. It is, however, to be observed that these proceedings took place without any apparent regard to the provisions of the Civil Procedure Code, the record showing no order to admit it or directing it to be placed on the register of appeals, and it might therefore be doubted whether in strictness there was any appeal at all before the Chief Commissioner. It might at least be very fairly

contended that the record did not show any appeal to the Chief Commissioner which could go direct to the Privy Council from his Court.

Pearson, J.

4. The point for consideration appears to be whether the doubt in respect of the question of law referred to the High Court by the Chief Commissioner was entertained by him in the trial of the appeal preferred to him by the plaintiff in the suit.

5. That an appeal had been formally lodged in his Court is shown by the Chief Commissioner's statement. The counsel for the appellant informs us that he received a notice on behalf of his client to appear in the Chief Commissioner's Court on the 18th December last, and that when he appeared on that date the Chief Commissioner intimated that he was acting under the provisions of Section 551, Act X of 1877. The learned Counsel further informs us that he then proceeded to address the Court, and was heard for some time and then stopped by the Court, in consequence of its resolving to refer to the High Court the question of its competency to proceed with the appeal, or, in the form in which it is referred, the finality of the order appealed.

6. Under the circumstances, I am of opinion that the Chief Commissioner had commenced to hear and try the appeal, when the doubt which he desires the High Court to solve in respect of the question of law referred was entertained by him, and that the question was properly referred. The question whether an appeal can be heard is doubtless one which must be tried before the appeal can be tried on the merits, but the trial of that question is included in the trial of the appeal.

Spankie, J.

7. I am willing to acquiesce in the opinions of my honourable colleagues. At the same time, I cannot help regarding the reference as made before the case came on for trial. The appeal appears to have never been formally admitted : there is no order upon the memorandum of appeal either admitting it or directing that it should be registered. There is no order upon it summoning the respondent or directing that the appellant should appear on a certain date u/s 551 of the Civil Procedure Code. I cannot realise that the Chief Commissioner was acting u/s 551 of the Civil Procedure Code, which applies to procedure in the Ajmere Courts, having been made applicable thereto by the Ajmere Code. The object of Section 551 is to hear appellant without summoning respondent, and if the Court thinks that there is no case, it confirms the decision of the Court below on the merits. I can understand the Chief Commissioner's entertaining a doubt whether he should not reject an appeal as being beyond his jurisdiction. But if he rejected it, he would not be confirming the decision of the Court below, for there would have been no trial in his Court. What has been done now is that the difficulty appears to have arisen before the case came to trial, and therefore the position is not the same as that in Section

17 of the Ajmere Code.

Oldfield, J.

8. The Court seems to have been proceeding with the trial when it made this reference on the question of its jurisdiction, and I see no reason for supposing that the reference was not properly made.

Straight, J.

9. I think that this reference was properly made by the Chief Commissioner of Ajmere and that it should be disposed of by this Court.

10. The case having been again laid before the Division Bench (Spankie, J., and Straight, J.), the following Opinion was given by the Division Bench:

Straight, J.

11. The Chief Commissioner appears to be right in his view, that the appeal of the Thakur of Masuda lies to Her Majesty in Council from the Commissioner's Court in this particular case.

*[Application to Court whose decree is complained of.

Section 598:Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

Certificate as to value or fitness.

Section 600:--Every petition u/s 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of Section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.]